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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,391	01/11/2002	Mark Peyser Friedlander III	2929-425	5494

7590 04/28/2004

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Arlington, VA 22201

EXAMINER

SEMUNEGUS, LULIT

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/042,391	Applicant(s) FRIEDLANDER, MARK PEYSER	
	Examiner Lulit Semunegus	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. Applicant amended claims 1 and 14 to include an exposed combustible strip formed of a non-explosive and non-pyrotechnic material secured to or formed as part of the exterior surface of the case. This is not persuasive since other cited reference like Vetter et al (4,458,482) teach exactly that a combustible strip formed of a non-explosive and non-pyrotechnic material.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless - (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4 and 14 -16 are rejected under 35 U.S.C. 102(e) as being anticipated by Vetter et al (4,458,482). Vetter et al teach a rocket motor (10) containing propellant (17) enclosed in a case (13), which presents an explosion hazard when subjected to external heat, the improvement comprising: an exposed combustible strip (15) formed of a non-explosive and non-pyrotechnic material formed as part of the

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exterior surface of the casing (fig. 4 or 5); said strip (15) being constructed to burn and generate sufficient heat when exposed to predetermined external heat to weaken the adjacent portion of the case and effect rupture of the case to vent interior gases therein prior to auto ignition of the propellant or explosive (col. 2, lines 38-47) wherein the strip (5) is in contact with the exterior surface of the case (fig. 1)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 5-9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vetter et al (4,458,482) in view of Vetter et al (4,478,151). Vetter '482, teach all the limitations of claims 3, 5-9 and 13-15 except the combustible strip formed of metal or plurality of metallic strips. Vetter et al '151 teach plurality of strips in space relation thereon (fig. 1,6,8) and wherein the strips are in circumferentially and longitudinally spaced in relation to the exterior surface of the case and are in the form of rings mounted in spaced relation on the exterior surface of the case (fig. 5). At the time of the invention it would have been obvious to one ordinary skilled in the art to have the strip of Vetter '482 made out of metal or plurality of metallic strips to have precaution

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purposes where one vent is not sufficient and where using metal weakens the casing in a harmless fashion without explosive violence.

6. Claims 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vetter et al (4,458,482) in view of Henderson (H1047). Vetter et al '482 teach all the limitations of claims 10-12, including the strip made out of iron and aluminum mixture (col. 4, line 45-48), except the strip being formed of magnesium alloy.

Henderson teaches a strip (10) made out of metal and magnesium (fig. 4). At the time of the invention, it would have been obvious to one ordinary skilled in the art to have the strip of Dassis or Vetter et al '482, made out of magnesium as taught in Henderson, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lulit Semunegus whose telephone number is (703) 306-5960. The examiner can normally be reached on Mon-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Lulit Semunegus
Examiner
Art Unit 3641



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER